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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARLENE JENKINS,

Plaintiff,

-against-

NYCHA,

Defendant.

1:21-CV-10364 (AT)

ORDER OF SERVICE

ANALISA TORRES, United States District Judge:

Plaintiff, who appears *pro se*, brings this action in which she sues the New York City Housing Authority (“NYCHA”) arising from NYCHA’s alleged failure to provide heat and hot water to Plaintiff’s NYCHA apartment, and from at least one NYCHA employee’s alleged entry into Plaintiff’s apartment without Plaintiff’s knowledge or consent. Plaintiff seeks unspecified relief. The Court construes Plaintiff’s complaint as asserting claims under 42 U.S.C. § 1983 and state law. By order dated December 15, 2021, the court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”).

The Court directs service on NYCHA. For the reasons discussed below, the Court also directs the Clerk of Court to add as a defendant “John Doe” (a NYCHA employee who, in response to Plaintiff’s complaint about a lack of heat in her NYCHA apartment on November 4, 2021, entered into Plaintiff’s apartment while Plaintiff was not at home). The Court further directs counsel for NYCHA to provide to Plaintiff and the Court the identity and service address of “John Doe.”

DISCUSSION

A. Service on NYCHA

As Plaintiff has been granted permission to proceed IFP, she is entitled to rely on the Court and the U.S. Marshals Service to effect service. *See Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the Court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons and the complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served a summons and the complaint on NYCHA until the Court reviewed the complaint, and ordered that a summons be issued for NYCHA. The Court therefore extends the time to serve NYCHA until 90 days after the date that a summons is issued for NYCHA. If the complaint is not served on NYCHA within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (summary order) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service of the complaint on NYCHA through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for NYCHA. The Clerk of Court is further instructed to issue a summons for NYCHA, and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service of the complaint on NYCHA.

Plaintiff must notify the Court in writing if her address changes, and the Court may dismiss this action if Plaintiff fails to do so.

B. Adding “John Doe” as a defendant

Under Rule 21 of the Federal Rules of Civil Procedure, the Court, on its own motion, “may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21; *see Anwar v. Fairfield Greenwich, Ltd.*, 118 F. Supp. 3d 591, 618-19 (S.D.N.Y. 2015) (Rule 21 “afford[s] courts discretion to shape litigation in the interests of efficiency and justice.”). Under this rule, courts have added an individual as a defendant in an action, though that individual is not named as a defendant in the complaint, because he or she is mentioned “throughout the body of the [c]omplaint” as involved in the underlying alleged events. *George v. Westchester Cnty. Dep’t of Corr.*, No. 20-CV-1723, 2020 WL 1922691, at *2 (S.D.N.Y. Apr. 21, 2020); *see Adams v. NYC Dep’t of Corrs.*, No. 19-CV-5909, 2019 WL 2544249, at *2 (S.D.N.Y. June 20, 2019).

Plaintiff does not name as a defendant the NYCHA employee or employees who allegedly entered into her NYCHA apartment without her knowledge or consent. Plaintiff does allege, however, that in response to her complaint that on November 4, 2021, there was no heat in her apartment, a NYCHA representative informed the New York City Civil Court, Housing Part, that at least one NYCHA employee entered into Plaintiff’s apartment while Plaintiff was not at home; Plaintiff alleges that the NYCHA employee(s) entered into her apartment without her consent. In light of Plaintiff’s *pro se* status, the Court directs the Clerk of Court to add as a defendant to this action “John Doe” (an unidentified NYCHA employee who, in response to Plaintiff’s complaint that there was no heat in her apartment on November 4, 2021, entered into Plaintiff’s apartment while Plaintiff was not at home). *See* Fed. R. Civ. P. 21. This amendment to this action’s caption is without prejudice to any defenses “John Doe” may wish to assert.

C. Identifying “John Doe”

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying an unidentified defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit NYCHA to identify “John Doe.” “John Doe” is a NYCHA employee who, in response to Plaintiff’s complaint that on November 4, 2021, there was no heat in her NYCHA apartment, entered into Plaintiff’s apartment while Plaintiff was not at home. The Court therefore orders counsel for NYCHA to ascertain the identity of “John Doe” and the address where that person may be served. Counsel for NYCHA must provide this information to Plaintiff and the Court within 60 days of the date of this order.

Within 30 days of receiving this information, Plaintiff must file an amended complaint naming the newly identified individual as a defendant. The amended complaint will replace, not supplement, Plaintiff’s original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing service on the newly identified defendant.

CONCLUSION

The Court directs the Clerk of Court to mail a copy of this order to Plaintiff, together with an information package.

The Court also directs the Clerk of Court to add as a defendant in this action “John Doe” (an unidentified NYCHA employee who, in response to Plaintiff’s complaint that there was no heat in her NYCHA apartment on November 4, 2021, entered into Plaintiff’s apartment while Plaintiff was not at home). *See* Fed. R. Civ. P. 21.

The Court further directs the Clerk of Court to: (1) issue a summons for NYCHA, (2) complete a USM-285 form with the service address for NYCHA, and (3) deliver all documents necessary to effect service of the complaint on NYCHA to the U.S. Marshals Service.

In addition, the Court directs the Clerk of Court to mail a copy of this order and a copy of the complaint to NYCHA at NYCHA's Law Department, 90 Church Street, 11th Floor, New York, New York 10007.

An amended complaint form is attached to this order.

SO ORDERED.

Dated: December 16, 2021
New York, New York



ANALISA TORRES
United States District Judge

DEFENDANT AND SERVICE ADDRESS

New York City Housing Authority
NYCHA Law Department
90 Church Street, 11th Floor
New York, New York 10007
Attn: Law Department/Service

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

____ CV ____
(Include case number if one has been assigned)

against

AMENDED

COMPLAINT

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

_____.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____,
(Defendant's name) is a citizen of the State of _____

or, if not lawfully admitted for permanent residence in the United States, a citizen or
subject of the foreign state of _____.

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing
information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

 First Name

 Last Name

 Current Job Title (or other identifying information)

 Current Work Address (or other address where defendant may be served)

 County, City

 State

 Zip Code

Defendant 2:

 First Name

 Last Name

 Current Job Title (or other identifying information)

 Current Work Address (or other address where defendant may be served)

 County, City

 State

 Zip Code

Defendant 3:

 First Name

 Last Name

 Current Job Title (or other identifying information)

 Current Work Address (or other address where defendant may be served)

 County, City

 State

 Zip Code

Defendant 4:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

[illegible]

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

_____		_____	
Dated		Plaintiff's Signature	

First Name	Middle Initial	Last Name	

Street Address			

County, City		State	Zip Code

Telephone Number		Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.